

ARIZONA SILICA SAND COMPANY
v.
ACTING NAVAJO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 94-186-A

Decided September 28, 1994

Appeal from a civil penalty assessment for damages to an archaeological site.

Dismissed; referred to Hearings Division.

1. Appeals: Generally--Archaeological Resources Protection Act--
Indians: Archaeological Resources

Hearings and appeals concerning civil penalties assessed by the Bureau of Indian Affairs under the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-470mm (1988), are governed by the procedures established in 43 CFR Part 7.

APPEARANCES: Heidi L. McNeil, Esq., Phoenix, Arizona, for appellant.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On September 26, 1994, the Board of Indian Appeals (Board) received a notice of appeal from Arizona Silica Sand Company (appellant). Appellant seeks review of a decision issued on August 16, 1994, by the Acting Navajo Area Director, Bureau of Indian Affairs (Area Director; BIA), assessing it \$70,672 for damages to archaeological site AZ K:11:40 (ASM), located in T. 22 N., R. 29 E., Unplatted, UTM Coordinates, 390538N, 694950E, Apache County, Arizona. The Board finds that although it must dismiss the appeal for lack of jurisdiction, the appeal should be, and hereby is, referred to the Hearings Division of the Office of Hearings and Appeals.

[1] This case arises under the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa-470mm (1988). Section 470ff provides a right to a hearing before an administrative law judge to any person assessed a civil penalty for damages to an archaeological site. Regulations implementing the Act within the Department of the Interior appear in 43 CFR Part 7. 43 CFR 7.37(a) provides that "[a] ny person wishing to request a hearing on a notice of assessment of civil penalty * * * may file a written, dated request for a hearing with the Hearings Division, Office of Hearings and Appeals." Section 7.37(f) provides that an appeal from an administrative law judge's decision is to be filed with the Director, Office of Hearings and Appeals, for assignment to an ad hoc board of appeals.

Appellant filed its appeal with the Board in accordance with instructions given in the Area Director's decision. Appellant stated that it believed its appeal should be with the Hearings Division, but was filing an appeal with the Board in order to protect its appeal rights. The Board concludes that the proper appeal procedure for BIA decisions implementing the Archaeological Resources Protection Act is the procedure set forth in 43 CFR Part 7.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Navajo Area Director's August 16, 1994, decision is docketed and dismissed for lack of jurisdiction. The matter is, however, referred to the Hearings Division of the Office of Hearings and Appeals for consideration under 43 CFR Part 7.

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge